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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,215	01/23/2004	Boon Peng Chew	P142M	9145
27752 7590 09/28/2011 THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202				
EXAMINER VAKILL, ZOHREH				
ART UNIT 1629		PAPER NUMBER		
MAIL DATE 09/28/2011		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/764,215

Applicant(s)

CHEW ET AL.

Examiner

ZOHREH VAKILI

Art Unit

1629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1,2,4 and 6-17 is/are pending in the application.
- 5a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1,2,4,6-9 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-850)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION
Claims 1, 2, 4, and 6-17 are presented for examination.

A request for continued examination under 37 C.F.R. 1.114, including the fee set forth in 37 C.F.R. 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 C.F.R. 1.114, and the fee set forth in 37 C.F.R. 1.17(e) has been timely paid, the finality of the previous Office Action has been withdrawn pursuant to 37 C.F.R. 1.114. Applicant's submission filed 7/28/2011 has been received and entered into the present application. Claims 10-17 are withdrawn, Claims 1, 2, 4, and 6-9 are pending and are herein examined on the merits.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2, 4, and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayek (USPN 6133323).

Instant claims are drawn to a composition comprising astaxanthin, wherein the composition is a nutritionally balanced pet food composition wherein said composition attenuates inflammation, enhances immune response, enhances longevity, or combinations thereof; wherein said composition is selected from the group consisting of dog food compositions, cat food compositions and combinations thereof, wherein the composition comprises of about 0.0001% to about 3% of astaxanthin, by weight of the composition.

Regarding claims 1, 2, 4, and 6-9 Hayek discloses a process for feeding a companion animal such as a dog or cat a diet containing an effective amount of beta-carotene to enhance immune response and improve the overall health of the animal is provided. Regarding claim 2 Hayek teaches the diet includes from about 1 to about 50 mg/day of beta-carotene (from about 6 to about 315 mg beta-carotene/kg diet). Such a diet provides sufficient beta-carotene to be absorbed by the animal (see abstract). Further Hayek teach a pet food supplement and process for enhancing immune response and improving the overall health of companion animals such as cats and dogs, and more particularly to a pet food supplement and process which includes

beneficial amounts of beta-carotene in the animal's diet (col. 1, lines 10-15).

Carotenoids are naturally-occurring plant pigments which are absorbed in varying degrees by different species. Common carotenoids include beta-carotene, lycopene, lutein, zeaxanthin, and astaxanthin. These carotenoids are known to play an important role in modulating the immune system and enhancing the health of these species (see col. 1, lines 16-22).

It would have been obvious to one of ordinary skill in the art to use the composition taught by Hayek to generate a composition comprising astaxanthin for use by companion animal to enhance immune response. One would have been motivated to create such composition because Hayek teaches the use of astaxanthin in a pet food cats and dogs and its benefit enhancing the immune system. Therefore, one of ordinary skill in the art would have been motivated to use the pet food supplement in the animal's diet

Finally, one would have a reasonable expectation of success given that Hayek provide a detailed blueprint for making and using the composition comprising astaxanthin, and the steps of which are routine to one of ordinary skill in the art.

Thus in the absence of evidence to the contrary, the invention of claims 1, 2, 4, and 6-9 would have been prima facie obvious as a whole to one of ordinary skill in the art at the time the invention was made.

Response to Arguments and Remarks

Applicants argue that Hayek alone cannot support a prima facie case of obviousness because Hayek alone does not disclose, teach, or suggest a nutritionally balanced pet food composition that comprises astaxanthin. Hayek discloses providing a process for feeding a companion animal such as a dog or a cat a diet containing an effective amount of beta-carotene to enhance immune response and improve the overall health of the animal. See Column 1, lines 45-49. Applicants further argue Hayek does mention in its Background that astaxanthin is a carotenoid. See Column 1, lines 16-19. Hayek states carotenoids are absorbed in varying degrees by different species and are known to play a role in modulating the immune system and enhancing the health of the species. See Column 1, lines 16-26. However, Hayek fails to disclose a pet food composition comprising astaxanthin. It states in this Background section that these carotenoids are absorbed by varying species. It does not state dogs or cats. It does not state incorporated astaxanthin into pet food compositions. It then continues its disclosure by stating its invention related to beta-carotene. It fails to disclose any pet food composition comprising astaxanthin.

Applicant's arguments are not persuasive; Applicant is reminded that this is an obviousness rejection not anticipation. The rejection does not indicate that it anticipates, in fact it says it would have been obvious to incorporate one carotenoids for another, wherein the amount of carotenoid used in this case beta-carotene overlaps with the amount of astaxanthin, a carotenoid of the instant claimed invention. Applicant

is in agreement with the Examiner that Hayek discloses its Background that astaxanthin is a carotenoid. Applicant's attention is directed to col. 1, lines 17-19, where it indicates common carotenoids include beta-carotene, lycopene, lutein, zeaxanthin, and astaxanthin. Therefore, any of these carotenoids in a composition with the same concentration will provide the same effect. Applicant also argues Hayek states in this Background section that these carotenoids are absorbed by varying species. It does not state dogs or cats. It does not state incorporated astaxanthin into pet food compositions.

Examiner is not persuaded by such argument; Applicant is again reminded this rejection is an obviousness rejection not anticipation. Hayek in its Background section clearly discloses a pet food supplement for enhancing immune response and improving overall health of companion animals such as cats and dogs which includes beneficial amounts of beta-carotene in the animal's diet and as discussed above two of these common carotenoids are astaxanthin and beta-carotene. These beta-carotene one of the common carotenoids are used in the pet food supplement for the same purpose as the astaxanthin used in the composition of the instant claimed invention. Applicant has not provided any factual data that how four known carotenoids would behave differently from each other in a composition to be used as a nutritionally balanced pet food. Applicant has not provided any factual data that one carotenoid can not be predictably replaced by another carotenoid, for example, astaxanthin being replaced by beta-carotene and vice versa. The composition of the prior art teaches the use of beta-carotene in a pet food supplement and further teaches there are four other carotenoids that can be used which one of them is astaxanthin. Applicant's amendments and

remarks have been carefully considered in their entirety, but fail to be persuasive in establishing error in the propriety of the present rejection..

Conclusion

No claims of the present application are allowed.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is 571-272-3099. The examiner can normally be reached on 8:30-5:00 Mon.-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Lundgren, can be reached on 571-272-5541. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili

Patent Examiner
1629

September 21, 2011

/Jason M Sims/
Primary Examiner, Art Unit 1631